

BOARD OF ZONING APPEALS  
MINUTES  
March 28, 2006

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on March 28, 2006, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following board members were in attendance:

ERMA MARKHAM, BICKLEY FOSTER, JAMES RUANE arrives at 1:34pm, DWIGHT GREENLEE, STEVEN ANTHIMIDES, JUSTIN GRAHAM, and JOSHUA BLICK.

No board members were absent.

City of Wichita staff present:

HERB SHANER – Office of Central Inspection present.

SHARON DICKGRAFE – City of Wichita, Law Department

The following Planning Department staff members were present:

JESS MCNEELY, Secretary.

YOLANDA ANDERSON, Recording Secretary.

DALE MILLER, Current Plans Manager

**FOSTER** Yolanda will you perform the Roll Call?

**ANDERSON** Erma Markham (present), James Ruane (arrived at 1:34), Steven Anthimides (present), Joshua Blick (present), Justin Graham (present), Bickley Foster (present), Dwight Greenlee (present).

**FOSTER** We have a new member appointed name Joshua Blick.

**McNEELY** Yes, Mr Blick received orientation this morning and he is appointed by Gray.

**FOSTER** First item on the agenda is the minutes. If there is no request for changes, I will ask that we approve the 1/24/06 minutes.

**GREENLEE** Seconded

**FOSTER** Minutes approved.

**Motion carried 6-0-1**

**FOSTER** Jess, you may present your staff report.

**McNEELY** Good afternoon, I am here to present BZA2006-16. The applicant placed a 34.7 foot by 21.6-foot detached accessory structure on the subject corner lot with an 11-foot street side setback (see the attached site plan). The Unified Zoning Code (UZO) requires a 15-foot street side setback in SF-5 zoning, and allows for administrative adjustments of 20%, resulting in a 12-foot

setback. The applicant is one foot short of eligibility for an administrative adjustment, and now requests a variance to permit the accessory building with an 11-foot street side setback.

The accessory structure is built of concrete block and is currently unfinished with no roof. The accessory structure currently has no opening large enough for a vehicle garage door. The applicant could use the structure for permitted accessory uses in SF-5 zoning, which includes storage, hobby workshops, etc. This variance request is for a street side setback reduction only, and does not address the use of the structure. If the applicant wishes to use the structure as a dwelling, he will be required to request a Conditional Use permit for an accessory apartment, which may or may not be approved by the Metropolitan Area Planning Commission.

The existing primary structure on the site, and the abutting residence to the east, are approximately 11 feet from the street side property line. The two residences and detached garages south of the application area, also along Boston Street, have street side setbacks varying from five to ten feet. The application area, and all surrounding lots, were platted in 1950 as Purcells 7th Addition. Minimum streetside setbacks at the time of platting were six feet.

**UNIQUENESS:** It is the opinion of staff that this property is unique inasmuch as the property was platted and developed in 1950; the residence on the lot was constructed in 1950 at approximately the requested 11-foot street side setback. Residences and accessory structures within this same block of Boston Street have less street side setback than this variance request. The zoning regulations that established the 15-foot street side setback did not exist until 1996, long after the property had been developed. This property is also unique in that it is a 52-foot wide corner lot, with little room to develop an accessory structure.

**ADJACENT PROPERTY:** It is the opinion of staff that granting the requested variance would not adversely affect the rights of adjacent property owners, inasmuch as all properties within the same block of Boston Street are developed with similar encroachments into the currently required setbacks. The development of the neighborhood still largely reflects the setback requirements that were in effect prior to 1996, when the adoption of the revised zoning code made some of the residential structures and their accessory structures legally nonconforming encroachments. Conditions of this variance could be used to ensure that the accessory building is compatible in character with the adjacent properties.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulations constitutes an unnecessary hardship upon the applicant, inasmuch as requiring the applicant to comply with the street side setback requirements will prevent the applicant from improving his property with no corresponding public benefit.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the public has an interest in supporting the logical development of residential properties, including permitting upgrades and redevelopment of existing properties through the approval of variances in areas where non-conformities with the current zoning regulations are common.

**SPIRIT AND INTENT:** It is the opinion of staff that granting the requested variance would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the primary intent of the street side setback requirement is to maintain sufficient separation between structures and residential street right-of-way for public safety reasons, and the requested variance does not

negatively impact this intent. Boston Street is a local residential street, serving the immediate area. The placement of the accessory structure as proposed will have no impact on safe vehicular and pedestrian traffic along this portion of Boston Street.

**RECOMMENDATION**: Staff acknowledges that the purpose of a variance is not for correcting mistakes that cause a property to become non-compliant with a Code requirement. Staff finds that in this case, a staff recommendation for approval would have been given had this request come before the subject structure was built. Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to reduce the street side setback from 15 feet to 11 feet be GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan and elevation drawings.
2. The applicant shall submit building elevations to planning staff no later than 60 days after approval of the variance. The building elevations require approval by planning staff, and shall demonstrate that the accessory structure is compatible with the surrounding residential neighborhood in terms of exterior wall texture and color, roofing design, and roofing material.
3. The setback reduction shall apply only to the “34.7-foot by 21.6-foot detached accessory structure” as illustrated on the approved site plan. All other structures or additions on the subject property shall conform to the setbacks permitted by the Unified Zoning Code unless a separate Zoning Adjustment or Variance is granted.
4. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be constructed within one year of the granting of the variance.
5. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

Are there any questions of staff?

**FOSTER** Jess, may we look at the fence to the east?

**MCNEELY** That fence sets inside of the applicant’s property by 2 feet.

**FOSTER** Does it meet the setback requirements for an accessory apartment?

**MCNEELY** Yes, except for the four feet side street setbacks.

**RUANE** How tall is that fence?

**MCNEELY** About 8 feet high, the blocks it is setting on are not that tall.

**GREENLEE** Who built the fence?

**MCNEELY** The applicant.

**FOSTER** We will hear from the agent now.

**EWY** The questions, most of you are asking, are not about the application request but more about the site and the use. We are asking for a variance from 15 feet to 11

feet or a difference of 4 feet to the side street setbacks. This is for an accessory storage unit being built. I have nothing more to say about this case. Are there any questions?

**FOSTER** Are you aware of the 5 conditions?

**EWY** Yes, I am aware and I am in agreement with everything mentioned in the staff report and I will add that the exterior will be finished in compliance with the surrounding aesthetics of the neighborhood.

**FOSTER** What is the purpose of the accessory apartment?

**EWY** It is not for an apartment but an accessory storage unit to store supplies.

**FOSTER** Well we have an e-mail letter from a residence complaining that it will be used for an apartment or living quarters.

**MCNEELY** Handed a copy to Russ Ewy.

**EWY** This is my first time reviewing the neighbors complaint. This is not what we are asking for but rather an accessory storage unit.

**MARKHAM** Is Mr. Whiteside, the neighbor, saying that the fence is in his yard?

**FOSTER** Mr. Whiteside are you in the audience? Can you come up and speak?

**RUANE** Give your name and address.

**GARY WHITESIDE takes the podium.**

I am Gary Whiteside and I live at 1208 Waverly. The first problem I have is that no permits were issued to build this accessory unit and OCI is concerned about the sewer line running near to this newly built accessory because it is being built close to the utility easements.

**FOSTER:** They cannot get a permit now because it has been stopped by Central Inspections and they were stopped because they went over on the setbacks. What we are trying to do is get an approval to the variance of the setback before they can get a permit to finish their accessory. But what do you think about the exterior of the accessory appearance?

**WHITESIDE** I am more concerned that we are going to have a unit where more of his relatives are going to stay and that they are following the City building and permits codes instead of just erecting a building.

**FOSTER** This is not going to be a living quarters but a workshop or storage. I think we made that cleared.

**WHITESIDE** My biggest problems were there are no permits and how it was erected without any proper consideration.

**FOSTER** Do you have any objection of the 4 feet variance request?

**WHITESIDE** No, as long as the city is notified and all building permits are issued for that property saying what is it to be used for.

**FOSTER** Jess, what is the rear setback?

**MCNEELY** This is a survey of the site. You will see on the east side that the building does not encroach upon the utility easement. A surveyor submitted this drawing, I do not believe there are any issues involving the rear setbacks.

**FOSTER** Thank you Jess

**FOSTER** We need to indicate that we do have a letter from Terry Whiteside.

**ANDERSON** E-mail letter from Terry Whiteside sent Thursday, March 09, 2006 at 8:48 AM.

**FOSTER** Next we will hear from a lady who has the same name as mine but we are not related.

**CHAROLETTE FOSTER takes the podium**

I am Charolette Foster with the neighborhood association, and we work hard to maintain this area. This is not an upgrade to this neighborhood. We are concerned about the use of the accessory, what type of supplies, whether people are going to live there as well as what it will aesthetically look like. We received a letter for a variance to allow an accessory garage. It is on the agenda as a variance to allow an accessory garage. The building constructed as you can see is not for a garage and we are trying to make certain that it is not going to be used to house more relatives in an already crowded area.

**FOSTER** Did you hear that we are not approving this structure to be lived in?

**C. FOSTER** We are considering what it will look like, we are hoping it will not look like the garage to the east side. Then carries a photo to Bickley.

**FOSTER** Ms. Charolette Foster handed a picture showing a garage and a horse trough.

**MARKHAM** Did you say that the person sent out a letter said a garage was being built?

**C. FOSTER** Agenda has an accessory garage.

**FOSTER** We need to correct this on the agenda so it will be noted that it is an accessory storage.

**RUANE** The horse trough is that before?

**C FOSTER** This is before and there are refrigerators out there as well

**MS. RAMSEY takes the podium**

My name is Ms. Ramsey. I live near to this property. I am here because he had started building before getting proper permits. He is building this to provide residence for his relatives. One hour ago, he advised me that he is building this for housing for his relatives. He needs more storage and he needs a garage. He is overcrowded. He is trying very hard to do his best for his family and he is very nice man. I am concern about whether or not he is using the accessory for housing and if not, what does he intend to use it for?

**FOSTER** I will give the applicant time to speak.

**EWY** The agent for the applicant. I will answer on behalf of the applicant. No, this will not be used as an accessory apartment for residence. I have a rebuttal that this is not going to be a garage. I can see there are a lot of concerns but not about what we are asking for but rather what is going on there. While under construction, there is going to be a lot of supplies. I think there are a lot of questions about what is being stored there with all the lumber and supplies lying around in the yard. He needs a storage facility and that is what the Baughman company is requesting on his behalf.

**RUANE** I missed your answer to the question. Whether this is going to be used for occupancy?

**EWY** The Baughman Company was not under that understanding. We are trying to get this approved for an accessory storage unit.

**RUANE** Can we ask Mr. Reyes?

**JESUS SEANEZ-REYES comes to the podium.**

I am Mr. Jesus Reyes. My dad has a lot of items that need to be stored. No, this is not going to be a residence. I am building a storage unit. If I wanted someone to live in it, I could have open my mouth and spoke freely about it. My father has items that need a place to be stored instead of laying out in the yard.

**FOSTER** Any questions?

**EWY** Is everything understood?

**FOSTER** I am going to ask Mrs. Foster to take the podium.

**C FOSTER** Why is there a sewer line going up to this house? We can see a sewer line being constructed for the accessory unit.

**REYES** I had to dig up the sewer and put a 8-40 in and take all the ceramic line out. The city told me that I had to replace the old sewer line because it need a new ceramic line installed since it was running under the accessory. There is no sewer line in the storage unit.

**EWY** The city told him to remove the existing orangeburg sewer line because the accessory is over the sewer line and he was ordered to remove it and replace it with the ceramic sewer line as the old sewer line collapses easily.

**GREENLEE** You are saying that the current city building code requires that the old sewer line be replace with the current requirements for sewer line and that there are not sewer connections inside the accessory.

**FOSTER** I am going to hold all questions to the board.

**FOSTER** The correction needs to be made to show accessory storage not garage. It meets the setback to the east and the west. All we need to approve is the side setback of 4 feet.

**FOSTER** Any other comments?

**DICKGRAFE** This board does not have the jurisdiction to limit the uses, only to approved the 4 feet setback

**FOSTER** I disagree. I believe this board can say what uses are being agreed upon.

**GREENLEE** I move that this be approved

**MARKHAM** Seconded

**FOSTER** Motion carried with 6 approved one abstained (Anthimides)

**Motion 6-1-0**

**FOSTER** We will not hear from Central Inspection Herb Shaner.

**SHANER** Herb Shaner with Central Inspections, I have nothing to report.

**RUANE** I would like a follow-up on whether or not the landscaping has been completed.

**SHANER** No, it has not been met as far as landscaping goes.

**RUANE** Do we have any means to enforce it?

**MILLER** Yes, they have guarantees that can be held.

**RUANE** Okay, then we just need to follow up later on how the landscaping is going. This is spring so it may get done soon.

**SHANER** A neighbor said he would help with trees. At least that is what was said at the meeting.

**RUANE** Have you been by to check?

**SHANER** I was just by there to see what is going on.

**FOSTER** Motion to adjourn at 2:36.